90-1886

Supreme Court, U.S.
FILED
JUN 6 1991
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

RICHARDSON'S JEWELLRY (LLOYDMINSTER) LTD.,
Petitioner,
vs.
SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION THREE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the Respondent Court herein err in assuming jurisdiction over the Petitioner, a foreign defendant, when the only contact with the forum was provided by the unilateral acts of other foreign parties?

PARTIES TO THE PROCEEDING BELOW

1. Petitioner, RICHARDSON'S JEWELLRY (LLOYDMINSTER LTD.)[1] is one of the defendants in the action described herein, and a party beneficially interested herein.

2. Respondent is the Superior Court of the State of California, County of Orange, The Honorable Robert D. Monarch, Presiding.

3. Real parties in interest are the plaintiffs[2]; the surviving heirs and personal representatives of a pilot and

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[1] Richardson's Jewellry (Lloydminster) Ltd. is not a subsidiary or a parent company of any other corporate entity.

[2] Plaintiffs are MICHAEL ORAN, Executor of the Estate of ANTHONY DEIS, deceased; MARGARET KAUZOR, Personal Representative of the Estate of KIMBERLY DEIS, deceased; MARGARET KAUZOR, Personal Representative of the Estate of AMANDA DEIS, deceased; MARGARET KAUZOR, Personal Representative of the Estate of JACLYN DEIS, deceased; and DENNILLA BISCHOFF.

his family, and the other defendants[3] in the action hereinafter described, and are parties beneficially interested in this proceeding.

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[3] The other defendants are PIPER AIRCRAFT CORPORATION; TELEDYNE CONTINENTAL MOTORS; TELEDYNE, INC.; TEXTRON, INC.; TEXTRON LYCOMING; and MARTIN AVIATION, INC.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	vi
PETITION FOR WRIT OF CERTIORARI	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED ...	3
STATEMENT OF CASE	3
REASONS FOR GRANTING THE WRIT ...	8
CONCLUSION	14

Appendix A Notice of Ruling of Superior Court of the State of California for the County of Orange Entered February 15, 1991

Appendix B Denial of a Petition for a Writ of Mandate of the Court of Appeal of the State of California, 4th Appellate District (Division 3) Filed March 7, 1991

Appendix C Denial of a Petition for Review of the Supreme Court of the State of California Filed April 24, 1991

Appendix D § 418.10(a) of the California Code of Civil Procedure

TABLE OF AUTHORITIES

CASES Page

Abbott Power Corp. v. Overhead Electric Co.
60 Cal.App. 272, 131 12

Burger King Corp. v. Roudzewicz
471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985) 9,13

STATUTES

California Code of Civil Procedure §418.10(a) 3,5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

RICHARDSON'S JEWELLRY (LLOYDMINSTER) LTD. - Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE - Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA 4TH APPELLATE DISTRICT DIVISION 3

Petitioner, RICHARDSON'S JEWELLRY (LLOYDMINSTER) LTD., respectfully prays that a Writ of Certiorari issue to review the ruling of the Superior Court of the State of California for the County of Orange, the Honorable Robert D. Monarch

presiding, denying the motion to quash brought by the Petitioner, appearing specially and only for the purposes of challenging jurisdiction, when there was no constitutional basis for assuming general jurisdiction over the Petitioner and the Respondent Court failed to state any reason for assuming such jurisdiction, contrary to the prior holding of this Court.

JURISDICTION

The Notice of Ruling of the Respondent Court of February 13, 1991, set forth in Appendix A, was entered on February 15, 1991.

A Petition for a Writ of Mandate was denied by the Court of Appeal of the State of California, Fourth Appellate District (Division 3) on March 7, 1991, and is set forth in Appendix B.

Review in the Supreme Court for the

State of California was denied on April 24, 1991, and is set forth in Appendix C.

The jurisdiction of this Court is invoked under Title 28, §1257(a) of the United States Code.

STATUTORY PROVISIONS INVOLVED

§ 418.10(a) of the California Code of Civil Procedure is set forth in Appendix D.

STATEMENT OF CASE

On March 29, 1990, plaintiffs, the surviving heirs and personal representatives of a pilot and his family, filed in Respondent Court against this Petitioner, as defendant, and against other defendants, a Complaint, numbered 620569 in the file and records of the Respondent Court, for Damages for Wrongful Death allegedly sustained on or about March 31, 1989, at or near John Wayne Airport, Santa Ana, Orange County,

in the State of California, and involving the crash of a Piper Aerostar aircraft which was being operated by ANTHONY DEIS, now deceased, represented in this action by MICHAEL ORAN, a real party in interest and both residents of Canada. The aircraft was owned by the Petitioner, a Canadian Corporation.

The pilot, ANTHONY DEIS, and the passengers, his spouse and children were the only persons aboard the aircraft and all received fatal injuries. All were domiciled in Alberta, Canada.

The Petitioner, RICHARDSON'S JEWELLRY (LLOYDMINSTER) LTD., is a Canadian Corporation, incorporated in Alberta, Canada in 1979. The sole shareholders, officers and directors of Petitioner, were ANTHONY DEIS and his spouse MARILYN DEIS. Petitioner owned and operated a jewelry business in

Western Canada. Following the crash, the company ceased doing business, and the shares passed through probate under Alberta law. The sole allegation against Petitioner in this case involves the ownership of the subject aircraft. At the time of the crash, the aircraft was on loan to the deceased pilot and his family solely for a pleasure trip in California.

Petitioner made no general appearance in Respondent Court. Rather, on February 13, 1991, Petitioner appeared specially in Respondent Court, and continues to appear specially in these proceedings. Pursuant to the provisions of Section 418.10(a) of the California Code of Civil Procedure, Petitioner moved for an order quashing service of summons on the grounds that the Court lacked jurisdiction in that the Petitioner was

a Canadian corporation not subject to general jurisdiction in California, that MICHAEL ORAN, a plaintiff, was the personal representative of the deceased pilot who was domiciled in Canada and who, along with his wife, were the sole shareholders, officers and directors of the petitioning corporation which does not have minimum contacts with the State of California, and assumption of jurisdiction against Petitioner in the matter would offend traditional notions of fair play and substantial justice.

In California, the only procedure for challenging personal jurisdiction is a motion to quash service of summons, under California Code of Civil Procedure section 418.10(a).

On February 13, 1991, in Respondent Court, the Honorable Robert D. Monarch, Judge, denied the motion of the

Petitioner for an order quashing service of summons without stating reasons for such denial.

Respondent, in denying the motion of the Petitioner for an order quashing service of summons, erred in assuming jurisdiction over the Petitioner whose only contact with the forum was provided by the unilateral acts of the foreign decedents.

As set forth herein, there is no basis for general jurisdiction over Petitioner, which is a Canadian company, not doing business in California, and not invoking the benefits or protection of the laws of California. The sole basis for asking the Respondent Court to assume jurisdiction would be the fact that the aircraft, on loan to the Canadian decedents for their own use, crashed in its jurisdiction. The real plaintiffs

are Canadian, the dispute involves a claim by Canadians against a Canadian corporation, and the only California connection resulted from the aircraft being flown into California by plaintiffs' decedents.

It was the unilateral acts of the plaintiffs' decedent ANTHONY DEIS that brought the aircraft to California and such acts (as opposed to acts of the Petitioner) cannot supply the minimum contacts for purposes of establishing jurisdiction over the Petitioner, a foreign defendant.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because this Petition presents an issue previously resolved by this Court. The ruling set forth in Appendix A conflicts with previous decisions of this Court.

I. The Petitioner does not have the requisite minimum contacts and assumptions of jurisdiction would violate traditional notions of fair play and substantial justice.

In Burger King Corp. v. Roudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985), this Court quashed service on a non-resident defendant because of lack of minimum contacts. There this Court held "purposeful availment requirement for long-arm jurisdiction insures that defendant will not be held into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts or the unilateral activity of another party or a third person." (Emphasis added)

As set forth in the Statement of Case, Petitioner is a Canadian corporation, whose place of business was

in Camrose, Alberta. Petitioner did not do business in California, and its sole contact with California for purposes of this action was its presence within California as the owner of the Canadian registered aircraft, operated by the Canadian pilot with Canadian passengers on board solely for the purposes of a pleasure trip to California.

The sole basis for claiming a contact between Petitioner and the State of California is the presence of the corporate owned aircraft within the state, and the resulting accident. However, the aircraft arrived in California as a result of the unilateral activity on the part of the deceased pilot, who, along with his wife, were the sole shareholders, officers and directors of the corporation. There is no suggestion that they were in California

for any purpose other than for their own pleasure.

Plaintiffs therefore have not and cannot allege that the subject aircraft arrived in California other than by the unilateral act of the deceased Canadian pilot who commissioned the aircraft for the purposes of taking his wife and family on a vacation to California. As to the Petitioner, there is no basis for a finding of minimum contacts with the State of California under the facts of this case.

II. Petitioner will sustain immediate and irreparable damage if submitted to California jurisdiction.

There are no California plaintiffs with any financial interests in the outcome of this lawsuit and the claims against the Canadian defendant should be resolved under Canadian law. Although in

Abbott Power Corp. v. Overhead Electric Co. 60 Cal.App. 272, 131 Cal.Rptr. 508 (1976), the Court noted that the interest of California in providing a forum for its residents is strong, by contrast the interest of California in providing a forum for Canadian parties is non-existent. Petitioner will, therefore, sustain immediate and irreparable damage if it has to submit to California jurisdiction in that it would have to defend itself in the forum state against both the interest of the plaintiff in suing locally and the interrelated interest of the state in assuming jurisdiction.

III. The settlement of an important question of law should be secured so far as it relates to the submission of jurisdiction by the Petitioner in this action.

This Court should take the opportunity to correct the error of the Respondent Court in disregarding the express rule set forth in Burger King Corp. v. Roudzewicz, supra, and should grant Certiorari here to make it abundantly clear that unilateral acts of plaintiffs (as opposed to acts of defendants) cannot supply the necessary minimum contacts for purposes of establishing jurisdiction over foreign defendants.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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RICHARDSON'S JEWELLRY
LLOYDMINSTER) LTD.
(appearing specially for
purposes of challenging
service of process
and/or jurisdiction)

June 4, 1991

APPENDIX A

APPENDIX "A"

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Attorneys for Defendant MICHAEL ORAN, personal representative of the ESTATE OF ANTHONY DEIS, appearing specially herein only for purposes of challenging jurisdiction

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MARGARET KAUZOR, ET AL., Plaintiffs, vs. MICHAEL ORAN, ETC., ET AL., Defendants.	CASE NO. 620651 [Differential Case Mgmt Program Judge Robert D. Monarch] NOTICE OF RULING DATE: FEBRUARY 13, 1991 TIME: 9:00 A.M. DEPT: "10"

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on February 13, 1991, at 9:00 a.m., in Department "10" of the above-entitled Court, the Honorable Robert D. Monarch heard two Motions to Quash brought by defendant Michael Oran, personal representative of the Estate of Anthony Deis, appearing specially and only for the purposes of challenging jurisdiction, in Kauzor v. Oran, Orange County Superior Court Case No. 620651, and defendant Richardson's Jewellry, Ltd., appearing specially and only for the purposes of challenging jurisdiction in Oran v. Piper Aircraft Corporation, Orange County Superior Court Case No. 620569. Rutan & Tucker, by Sanford Shatz and Stephen B. Otto specially appeared on behalf of moving party, defendant Michael Oran, personal representative of the Estate of Anthony Deis. Kern and Wooley, by Doug Pahl, specially appeared on

behalf of defendant and moving party Richardson's Jewellry, Ltd. The Law Offices of Ned Good, by Ned Good, appeared on behalf of plaintiffs Margaret Kauzor, personal representative for the Estates of Marilyn Deis, Amanda Deis, Kimberly Deis, and Jaclyn Deis, and Mary Richardson and Carlyle Richardson. Luce, Forward, Hamilton & Scripps, by George Howard, appeared on behalf of plaintiffs Michael Oran, personal representative of the Estate of Anthony Deis, Margaret Kauzor, personal representative of the Estates of Amanda Deis, Kimberly Deis and Jaclyn Deis, and Daniella Bishoff. Chase, Rotchford, Drukker & Bogust appeared on behalf of Martin Aviation, Inc.

After considering the moving papers, opposition and reply papers, and oral argument, the court ruled as follows:

The tentative is the ruling, the Motions to Quash are denied.

Dated: February 15, 1991

RUTAN & TUCKER

Sanford Shatz, Attorneys for Defendant Michael Oran, personal representative of the Estate of Anthony Deis, appearing specially herein only for purposes of challenging jurisdiction

APPENDIX B

APPENDIX "B"

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RICHARDSON'S JEWELLRY, Petitioner, vs. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, Respondent, MICHAEL ORAN, et al., Real Parties In Interest.	)	O R D E R G010714 (Super. Ct. No. 62 05 69)

COURT OF APPEAL-4TH DIST. DIV. 3
FILED
MARCH 7, 1991

DEPUTY CLERK

THE COURT:*

The petition for a writ of mandate is DENIED.

SILLS, P.J.

SILLS, Presiding Justice

*Before Sills, P.J., Crosby, J., and Moore, J.

APPENDIX C

APPENDIX "C"

Fourth Appellate District, Division Three,
No. G010714
S020069

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

I N B A N K

RICHARDSON'S JEWELLRY, Petitioner

vs.

ORANGE COUNTY SUPERIOR COURT, Respondent

MICHAEL ORAN, Real Party In Interest

SUPREME COURT
FILED
APRIL 24, 1991
ROBERT WANDRUFF CLERK

_____
DEPUTY

Petition for review DENIED.

L U C A S

_____
Chief Justice

APPENDIX D

APPENDIX "D"

California Code of Civil Procedure.

Section 418.10 "[Notice of motion to quash service to stay or dismiss action: Petition for writ of mandate, and responsive pleading: Default and general appearance.] (a) A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion either or both:

(1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her.

(2) To stay or dismiss the action on the ground of inconvenient forum."

Supreme Court, U.S.
FILED
JUL 3 1991
OFFICE OF THE CLERK

(2)

No. 90-1886

In The

Supreme Court of the United States

October Term, 1991

RICHARDSON'S JEWELLRY (LLOYDMINSTER), LTD.,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeal In The State Of California, Fourth Appellate District, Division Three

BRIEF IN OPPOSITION

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10

QUESTION PRESENTED

The question presented, as framed in the Petition for Writ of Certiorari, is inaccurate and argumentative. The question is more properly framed as follows: Did the Respondent Court err in assuming jurisdiction over Petitioner, a foreign corporation, owner of an aircraft which crashed within Orange County, California, resulting in the deaths of five individuals?

PARTIES TO THE PROCEEDING BELOW

Respondents and Real Parties In Interest Michael Oran, Executor of the Estate of Anthony Deis, deceased; Margaret Kauzor, personal representative of the Estate of Kimberly Deis, Amanda Deis and Jaclyn Deis, all deceased; and Dennillia Bischoff, agree with Petitioner's statement of the parties to the proceeding below.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING BELOW ii

JURISDICTION 2

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF CASE 3

ARGUMENT 4

1. The Petition Should be Denied Because The Ruling Below is Not Inconsistent With Any Previous Decision of This Court 4

2. Maintenance of This Suit Against Petitioner Would Not Offend Traditional Notions of Fair Play and Substantial Justice 5

3. The Court Lacks Jurisdiction Because There is an Independent and Adequate State Ground for the Decision 8

4. This Case Does Not Fulfill the Court's Standards for Grant of Certiorari of State Court Judgments 8

CONCLUSION 10

TABLE OF AUTHORITIES

Page

CASES

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 4, 5, 9

World-Wide Volkswagon Corp. v. Woodson, 444 U.S. 286 (1980) 5, 6

STATUTES

California Code of Civil Procedure § 410.10 ..... 2, 6, 7

California Code of Civil Procedure § 418.10(a) 3

United States Title 28 § 1257(a) 2

OTHER

Restatement, Second, Conflict of Laws § 38 (1971) ... 6, 7

Restatement, Second, Conflict of Laws § 51 (1971) ... 6, 7

No. 90-1886

In The

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RICHARDSON'S JEWELLRY (LLOYDMINSTER), LTD.,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE,

Respondents.

Petition For Writ Of Certiorari To The Court Of Appeal In The State Of California, Fourth Appellate District, Division Three

BRIEF IN OPPOSITION

Respondents and Real Parties In Interest Michael Oran, Executor of the Estate of Anthony Deis, deceased; Margaret Kauzor, personal representative of the Estates of Kimberly Deis, Amanda Deis and Jaclyn Deis, all deceased; and Dennillia Bischoff, respectfully pray that the Petition for Writ of Certiorari be denied.

In the proceedings below, Petitioner Richardson's Jewellry, (Lloydminster), Ltd., unsuccessfully sought to quash service of the summons and complaint in this matter, asserting it lacked sufficient minimum contacts with California to permit the exercise of *in personam*

jurisdiction. The trial court denied the motion to quash service of the summons and complaint. Petitioner unsuccessfully sought a writ of mandate/prohibition from the California Court of Appeals, Fourth Appellate District, Division Three. When the California Court of Appeals denied the application for a writ of mandate/prohibition, Petitioner unsuccessfully sought a similar writ from the California Supreme Court.

The decision of the trial court is correct and supported by the record. There is no merit to the Petition.

JURISDICTION

Petitioner invokes jurisdiction pursuant to Title 28 § 1257(a) of the United States Code. Respondents contend that there is no jurisdiction in this Court under such section; and, in the alternative, that this case does not meet the standards for certiorari established in decisions of this Court.

STATUTORY PROVISIONS INVOLVED

Petitioner conveniently omits to state that California's "long arm" statute applies to this case. That statute, California Code of Civil Procedure § 410.10, is attached hereto as Appendix 1.

STATEMENT OF CASE

Petitioner is a Canadian corporation which owned an aircraft. Decedent Anthony Deis, represented herein by his executor, Michael Oran, was the President of Petitioner and a licensed pilot. On March 31, 1989, Mr. Deis, his wife, Marilyn Deis, and their three minor children, Kimberly, Amanda and Jaclyn Deis, were all killed in an aircraft accident near John Wayne Airport in Orange County, California. It is undisputed that the aircraft was owned at the time of the crash by Petitioner, a Canadian corporation, which also owned and operated a jewelry business in Canada.

It is also undisputed that Mr. Deis, his wife and his children were all Canadian citizens and domiciled in Alberta, Canada. It is further undisputed that the sole shareholders, officers and directors of Petitioner were Anthony Deis and his spouse Marilyn Deis.

Petitioner erroneously contends that, at the time of the crash, "the aircraft was on loan to the deceased pilot and his family." There is no evidence whatsoever in the record of any "loan" of the aircraft.

A special appearance was made below by Petitioner, seeking to quash service of the complaint pursuant to Section 418.10(a) of the California Code of Civil Procedure.

Petitioner initially contended that it did not have "minimum contacts" with California because it had not done business in California. However, Real Parties In Interest contended that the basis for jurisdiction over

Petitioner rested not on its having done business in California but on its having owned the aircraft which caused the fatal accident, and on other factors.

Petitioner below argued that the only contact with the forum was the "unilateral acts" of its own President, decedent Anthony Deis. This argument is without merit for reasons stated *infra*.

ARGUMENT

1. The Petition Should be Denied Because The Ruling Below is Not Inconsistent With Any Previous Decision of This Court.

Petitioner cites *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) as authority for its position. This case was never cited to the trial court below, nor was it cited in the Petition For Writ of Mandate/Prohibition to the California Court of Appeals. The case involved a breach of contract claim by a Florida Corporation in a Florida court against a Michigan-based franchisee, concerning the operation of a Burger King restaurant in Michigan. This Court held that Michigan franchisees could be forced to defend an action in Florida. The case has nothing to do with a factual situation such as this, where a foreign corporation owns property that causes personal injuries in another state. Indeed, the language cited by Petitioners is *dicta* in the *Burger King Corp.* opinion. This Court held that the defendant in *Burger King* "reached out beyond" Michigan and negotiated with a Florida corporation for the purchase of a long term franchise, intending to take the benefit of that arrangement. 471 U.S. 479-480. There

were no alleged "unilateral" activities by third parties in *Burger King*.

In this case there is no "unilateral activity of another or a third person." The so-called "unilateral activity" was the actions of the *President* of Petitioner, who hardly qualifies as a "third party." Petitioner was free to prohibit its officers from using the aircraft outside Canada. It never did so. Corporations can only act through their officers, employees and agents. Even assuming the aircraft was in California on a vacation, such a purpose is not inconsistent with the corporate ownership of the aircraft. Corporate officers are entitled to take vacations and do so to benefit the corporation for whom they work. Even if the corporate aircraft arrived in California on a pleasure trip, it remained the property of the corporation.

2. Maintenance of This Suit Against Petitioner Would Not Offend Traditional Notions of Fair Play and Substantial Justice.

This Court, in *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286 (1980) stated:

> A state court may exercise personal jurisdiction over a nonresident defendant so long as there exist 'minimum contacts' between the defendant and the foreign state [citation omitted] . . . The protection against inconvenient litigation is typically described in terms of 'reasonableness' or 'fairness.' We have said that the defendants' contact with the foreign state must be such that maintenance of the suit 'does not offend traditional notions of fair play and substantial justice.' [Citation omitted.]

Id. at 291-292. Indeed, the Court in *Worldwide Volkswagon* went on to state that the limits imposed by the due process clause have been relaxed over the years. *Id.* at 292.

The State of California enacted California Code of Civil Procedure § 410.10, a copy of which is attached hereto as Appendix 1, to ensure the most expansive scope of jurisdiction possible within Constitutional restraints. The Judicial Council comments to that section state in part:

> . . . a state has power to exercise judicial jurisdiction over a foreign corporation which has owned, used or possessed a chattel in the state with respect to any cause of action arising from the chattel while it was in the state and was so owned, used or possessed, unless the nature of the chattel and the foreign corporation's relationship to the state make the exercise of such jurisdiction unreasonable.

Judicial Council comments to California Code of Civil Procedure § 410.10 at p. 482 (West's 1991). This comment is drawn almost verbatim from the *Restatement, Second, Conflict of Laws* § 51 (1971).

The comments to *Restatement, Second, Conflict of Laws* § 38 (1971) support jurisdiction in this case:

> Judicial jurisdiction may be exercised over an individual as to causes of action arising from his use or possession within the state of a chattel which is of a sort dangerous to life or tangible things. By using or possessing such a chattel in a state, the individual endangers the interests of other persons in the state and can fairly be required to stand suit in the state for any injury

> that may result. The chattel need not be peculiarly dangerous, as is a bomb or explosive. It need only be of a sort from which liability in tort for personal injury is not unlikely to arise, as is true, for example, of most kinds of mechanized equipment.

See, comment (c) to section 38, *Restatement, Second, Conflict of Laws*. The comment then gives an example of injuries to a child arising from a tractor owned by a nondomiciled individual. The state where the accident occurred would have jurisdiction to hear a dispute between the injured person and the owner of the chattel. *Restatement, Second, Conflict of Laws* § 51, which applies to corporations, states that "the rule here is the same as that which is applicable to individuals." *See*, comment (a) to *Restatement, Second, Conflict of Laws* § 51.

All of the above Restatement provisions were cited to the courts below. Those courts clearly agreed with Respondents' arguments. Petitioner conveniently omits from the Petition any reference to California Code of Civil Procedure § 410.10 and these provisions.

Further, it is not unreasonable to compel Richardson's to defend this action in California. The most important witnesses (eye witnesses to the crash and federal investigators) are in California. Additionally, a California based defendant, Martin Aviation, Inc., serviced and refueled the aircraft immediately prior to the accident. The estates of the Canadian decedents chose to bring the action in California, and a related action by the deceased wife of Anthony Deis also is ongoing in California. That action names Anthony Deis' estate as a defendant. Because Respondent Oran, as executor of Anthony

Deis' estate, is being required to defend the action by the estate of Mrs. Deis, he may be subject to a judgment in California on that action. Mr. Deis' estate will have indemnity rights back against Petitioner. If Petitioner is not compelled to defend in California, Anthony Deis' estate may be subject to conflicting or inconsistent results because it would have to litigate its indemnity action elsewhere.

3. The Court Lacks Jurisdiction Because There is an Independent and Adequate State Ground for the Decision.

The basic dispute in this case is over the interpretation of a California statute, Code of Civil Procedure § 410.10. Petitioner erroneously tries to cast the argument in terms of federal due process issues. In fact, Petitioner does not even mention the California "long arm" statute in the Petition. Nonetheless, that statute was urged below by Respondents, and the trial court, appellate court and California Supreme Court all agreed with Respondents. With all due respect to this Court, the question here is the application of the California statute to the facts of this case. No federal question is presented.

4. This Case Does Not Fulfill the Court's Standards for Grant of Certiorari of State Court Judgments.

Even if a federal question exists in this case, that fact, standing alone, is not sufficient for this Court to invoke its power of certiorari.

The only basis urged in the Petition for the granting of the writ is the alleged inconsistency between the decision below and a single opinion of this Court, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). However, there is no conflict as the facts of this case differ substantially from the facts in *Burger King*.

This case involves a tragic but, from the legal standpoint, unexceptional set of circumstances: the crash of a private plane resulting in the deaths of five people. The Canadian corporation does not want to defend in California for reasons best known to it. Nonetheless, it owned the aircraft that crashed in California; its President was the pilot of the aircraft; the eyewitnesses to the crash and investigators are all in California; the last entity to service and refuel the aircraft is in California; and the estates of the decedents wish to have the litigation occur in California.

Contrary to the argument of Petitioner, California *does* have a legitimate interest in providing a forum for persons injured by unsafe chattels being operated within its boundaries. The *Restatement, Second, Conflict of Laws* specifically so provides. The arguments of Petitioner to the contrary are without merit.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

DONALD L. SALEM, Counsel of Record

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July 3, 1991

APPENDIX 1

California Code of Civil Procedure Section 410.10 "Basis."

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.